92-374

NO. _____

Supreme Court, U.S.
FILED
AUG 31 1992
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1992

ROBERT J. STANDRING

PETITIONER, *PRO SE*

vs.

RALPH A. McALLISTER

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Robert J. Standring
757 Front Street
Berea, Ohio 44017
216 / 234-6118

QUESTION PRESENTED

Whether Respondent had statutory or common law immunity to violate Petitioner's civil rights to Due Process and Equal Protection of the Fourteenth Amendment to the United States Constitution by conducting an *ad hoc* (or secret) trial while acting under color of office?

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RESPONDENT.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Petitioner, Robert J. Standring, respectfully prays that a writ of certiorari issue to review sanctions and opinion of the United States Court of Appeals for the Sixth Circuit for refusing Petitioner the right to seek

redress for violation of 42 USC § 1983. Petitioner's cause of action is supported by Respondent's actions taken in clear absence of jurisdiction, under color of office, which violated Petitioner's constitutional and civil rights during *ad hoc*, secret trial proceedings.

OPINIONS BELOW

Previously, the US Supreme Court reported in Scheuer v. Rhodes (416 US 232) that similar actions are permissible, and that ruling appear in Appendix A. Respondent and the lower courts have relied upon the 1978 decision in Stump v. Sparkman, (425 US 349, 355-57) as a defense, and Petitioner has taken exception to their cited precedent based upon the lack of relevancy.

The unpublished written opinion of the Court of Appeals is reported as Standring v. McAllister, (Case number 92-3164, 6th Cir. 1992), and appears in Appendix B. The unpublished recommended ruling of the US Magistrate was adopted by the District Court,

and appears in Appendix C. This opinion was duly and timely challenged, and appears in Appendix D.

JURISDICTION

The Court of Appeals' opinion in this matter was filed on June 18, 1992. A timely Petition for Rehearing en banc, was filed on July 1, 1992. On August 13, 1992, the Court of Appeals denied petition, and appears in Appendix E. Having exhausted all lower court options, The Supreme Court's jurisdiction is invoked under Title 28, USC § 1254(1).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

The Fourteeth Amendment to the United States Constitution is set forth in Appendix F and 42 USC § 1983, appears in Appendix G.[1]

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[1]During appellate process, Respondent has abandoned the issue of judicial immunity under the XI Amendment, and appears to be relying solely upon non-statutory doctrines.

STATEMENT OF THE CASE

Petitioner, Robert J. Standring, filed a complaint for redress in violation of 42 USC § 1983 against a Cuyahoga County Common Pleas Judge, Ralph A. McAllister, hereinafter referred to as Respondent.

On July 20, 1990, 33 days prior to the scheduled date of trial (August 23, 1990), Petitioner requested in writing that Respondent reassign Petitioner's case to any other trial judge who would allow a trial by jury. After Respondent refused Petitioner's request, Petitioner filed for a change of venue, which Respondent removed from court records to conceal Respondent's efforts to act outside his jurisdiction.

In the complaint, Petitioner expressly alleged that his Constitutional and Civil Rights were obviated during an *ad hoc* trial (styled *Xerox Corp. v. Standring*) in which Respondent openly engaged in partisanship behavior and unlawful conduct. Specifically, during the *ad hoc* proceedings, the Respondent

engaged in a series of *ex parte* meetings with the Plaintiff's attorney and witnesses, denied Petitioner the right of discovery, obviated all of Petitioner's subpoenas by secretly moving the trial date forward three days to August 20 without proper notice, deprived Petitioner the right to trial by jury, excluded material evidence to further the uttering of a forgery, coached Plaintiff's witnesses to give false and misleading testimony, falsified entries on the court's docket, and generally suspended Petitioner's Constitutional Rights under the Seventh[2] and Fourteenth Amendments.

When Petitioner protested the use of Plaintiff's forgery, Respondent began serving as *defacto* second-chair legal counsel for the Plaintiff (*Xerox*). The trial transcript tends to support the fact that Respondent was knowledgeable of the forgery.

Petitioner appealed Respondent's decision to

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[2]The Seventh Amendment is currently the subject of a state appeal styled *Xerox Corp v. Standring*, in which Petitioner demonstrates seven separate attempts to obtain a trial by jury. Respondent refused refused Petitioner's jury requests, citing the Thirteenth Amendment as the bases for his legal decision. Refernece here is merely to illustrate Respondent's repeated efforts to subvert the US Constitution.

the Eighth District Court, and while the *Xerox Corp v. Standring* case was on appeal, Petitioner brought a separate action under 42 USC § 1983 in US District Court for violation of Petitioner's civil and constitutional rights to a fair and impartial trial.

Petitioner's action against Respondent was dismissed under Fed. Rule 12B(6), even though the initial complaint clearly presented a *prima facie* case with a specific cause of action stated. Petitioner appealed to the Sixth Circuit Court of Appeals, and that court circumvented the facts and merits of the case by affirming the US Magistrate's Report and Recommendation. The court's opinion avoided the civil rights and constitutional issues raised, thereby granting Respondent *defacto* immunity.

Respondent's defense to Petitioner's complaint has been that even if the Respondent committed the acts as specifically alleged in the complaint, Respondent is entitled to absolute judicial immunity under the doctrine of common law. On appeal, the courts have primarily relied on Stump v. Sparkman (425 US 349,

355-57).

In reply to this *ad hoc arguendo*, Petitioner has repeatedly demonstrated that the Stump *Id*, decision does not apply. Whereas Judge Sparkman was acting *within* his lawful jurisdiction, Respondent was acting *in clear absence of all lawful jurisdiction*, thus giving rise to alternative precedents and applications of law.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for four reasons:

(1) This petition is of national importance as it relates to a Petitioner's constitutional rights of due process and equal protection, which the lower courts have failed in their duty to address.

Collectively, the lower courts had given implied consent to Respondent's unlawful conduct to suspend Petitioner's constitutional rights. As such, their opinion has established a precedent for sanctioning unlawful conduct under color of office, thus allowing adminis-

trative officials to obviate a Petitioner's constitutional rights in direct conflict with Scheuer v. Rhodes (416 US 232).

(2) This Petition presents the opportunity for the Supreme Court to establish guidelines and criteria for what type of judicial conduct constitutes the clear absence of jurisdiction in cases involving the violation of Civil Rights under 42 USC § 1983.

Respondent acted in clear absence of all lawful jurisdiction after being duly notified in writing to reassign Petitioner's case for just cause—videlicet, for refusal to grant Petitioner's repeated jury requests. Further, Petitioner reasons that Respondent was under an affirmative duty under the First Canon of Judicial Ethics not to become personally involved in Petitioner's case, and legal obligation to bring Petitioner's reassignment request to the attention of the senior administrative authority. Respondent's failure to act upon this reasonable request and affirmative legal obligation, created Respondent's absence of jurisdiction to proceed.

The Respondent, having ignored the formal written request, further acted *outside* his judicial forum to hear, decide and adjudicate the case when Respondent elected to become personally involved in Plaintiff's case by holding partisanship *ex parte* meetings to coach Plaintiff's witnesses and covering up Plaintiff's forgery.

Petitioner maintains that none of these acts, whether committed knowingly or intentionally, exist within Respondent's lawful jurisdiction, and that the lower courts have consistently refused to address or respond to this absence of jurisdiction issue.

(3) The opinions of the lower courts are in constitutional conflict with the spirit, purpose and intent of 42 USC § 1983 enacted by the US Congress to discourage corruption under color of office.

In this respect, Respondent has been allowed to distance himself from lawful jurisdiction with sanctioned court approval. When Respondent decided to recess the *ad hoc* proceedings, he removed his judicial robe and returned to the courtroom for the

express purpose of threatening Petitioner with the suspension of all Petitioner's Constitutional Rights. This event was witnessed and attested to by an individual who was present in the courtroom when the Respondent orally threatened Petitioner. According to the sworn Affidavit, Respondent, who was out of robe said:

> "Let me make one thing perfectly clear to you right here and now. I'm going to take those Constitutional and Civil Rights you've been counting on, roll them up and shove them up your ass and watch you choke on them."[3]

Upon reconvening the *ad hoc* trial proceedings, Respondent then proceeded to immediately implement his threats with deeds by suspending Petitioner's constitutional rights. Thus, Petitioner is able to establish the intent, as well as the deed, which eliminates and repudiates Respondent's claim to harmless errors.

Petitioner asserts that there is nothing in the US

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[3]A copy of the entire Affidavit appears on pages 50-52 in Appendix D, which was attached to Petitioner's objection to the US Magistrate's R&R and filed on 7/29/91.

Constitution, the Canon of Legal Ethics or incorporated within the embodiment of Respondent's oath of office that allows for, promotes or encourages this opprobrium of judicial conduct—except for the misapplication of the common law doctrine of judicial immunity.

(4) Both the Respondent and the Court of Appeals have proffered Stump v. Sparkman, *Id* as the controlling precedent, rather than use the guidelines established in Scheuer v. Rhodes *Id*. When we examine Stump *Id*, we see that this action involved the sterilization of a minor, and the trial judge was sued for violation of Civil Rights for his judicial decision to administratively authorize the minor's sterilization.

There is nothing to suggest, however, that the trial judge in the Stump v. Sparkman *Id* intentionally or inadvertently acted outside his jurisdiction. Judge Sparkman *did not* engage in *ex parte* meetings, *did not* obviate subpoenas, *did not* coach witnesses to give false testimony, and *did not* participate in covering up an uttered forgery. There is no evidence to

support or suggest that Judge Sparkman removed his judicial robe for the express purpose of threatening to suspend constitutional and civil rights prior to hearing or adjudicating that particular case.

There are vertically no similarities between Respondent's judicial machinations in Petitioner's action and those of the Stump *Id* case. The Stump v. Sparkman *Id* case was decided upon judicial actions that were taken *inside* the realm of a proper judicial forum.

Petitioner's case, on the other hand, focuses exclusively upon those actions taken by Respondent that were taken *outside* a proper judicial forum and *in clear absence of lawful jurisdiction*. Petitioner's case has nothing to do with the lawful decisions made under proper judicial forum, but rather Respondent's unlawful conduct and actions that were taken to deprive this Petitioner of constitutional and civil rights while acting under the color of Respondent's elected office.

CONCLUSION

With affirmation by the lower courts of Respondent's actions while conducting a judicial forum, which establishes legal precedent, we now have a judicial process that allows *defacto* immunity for reprehensible conduct under color of office.

If the US Supreme Court overturns the lower court's decision that allows for *ad hoc* or secret trials, then the Respondent is not entitled to common law judicial immunity.

If Respondent is not entitled to judicial immunity, then the opinions of the lower court must be reversed or set aside, and the case remanded back to the court of original jurisdiction with appropriate instructions so that Petitioner's discovery process may continue.

WHEREAS *the foregoing issues and federal question of law have not been addressed by the lower court*, and,

WHEREAS the lower courts appear to be in direct conflict with the Fourteenth Amendment, as well

as for those reasons set forth in this petition, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals in this matter, along with appropriate guidelines.[4]

Dated: August 24, 1992.

Respectfully Submitted,

Robert J. Standring
Petitioner, *Pro Se*

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[4] If the US Supreme Court elects not to address the issues presented in this writ at the present time, it is requested that a writ be issued that remands this matter to the Court of Appeals for redetermination in light of the US Supreme Court's opinion in Scheuer v. Rhodes, (416 US 232).

APPENDIX A

[416 US 232]

SHARAH SCHEUER, Administratrix, Etc, Petitioner,

v

JAMES RHODES et al. (No. 72—914)

ARTHUR KRAUSE, Administrator of the Estate of Allison Krause, et al., Petitioners,

v

JAMES RHODES et al. (No. 72—1318)

416 US 232, 40 L Ed 2d 90, 94 S Ct 1683

[Nos. 72—914 and 72—1318]

Argued December 4, 1973. Decided April 17, 1974.

SUMMARY

The plaintiffs, as personal representatives of the estates of students who were killed on the campus of Kent State University, filed in the United States District Court for the Northern District of Ohio actions to recover damages under 42 USCS § 1983 against the Governor of Ohio, the Adjutant General and his assistant, various named and unnamed officers and enlisted members of the Ohio National Guard and the President

of Kent State University. The complaints alleged in essence that the defendants intentionally, recklessly, wilfully and wantonly caused an unnecessary deployment of the Guard on the Kent State campus and, in the same manner, ordered the Guard members to perform illegal actions which resulted in the death of plaintiffs' decedents; the complaints also alleged that the action was taken under color of State law and deprived the decedents of their lives and rights without due process of law. The complaints were dismissed by the District Court for lack of jurisdiction without the filing of an answer to any of the complaints. The District Court held that the defendants were being sued in their official capacities and that the actions were therefore in effect against the State of Ohio and hence not maintainable under the Eleventh Amendment. The Court of Appeals for the Sixth Circuit affirmed, agreeing that the suit was in legal effect one against the State of Ohio and, alternatively, that the common-law doctrine of executive immunity barred the actions (471 F2d 430).

Briefs of Counsel, p 835, infra.

On certiorari, the United States Supreme Court reversed the judgment of the Court of Appeals and remanded for further proceedings, either by way of summary judgment or by trial on the merits. In an opinion by Burger, Ch. J., expressing the unanimous view of the Court, it was held that (1) the plaintiffs' claims, as stated in the complaints, were not barred by the Eleventh Amendment and that, consequently, the District Court erred in dismissing the complaints for lack of jurisdiction and (2) that common-law immunity of the defendants for their acts is not absolute but a qualified immunity of varying scope, the variation dependent upon the scope of discretion and responsibilities of the office and all the circumstances as they reasonably appeared at the time of the action on which liability was predicated.

Douglas, J., did not participate.

HEADNOTES

Classified to U.S. Supreme Court Digest, Annotated

Civil Rights § 12.5 — construction of complaint

2. Complaints which, in essence, allege that the

defendant state officials "intentionally, recklessly, wilfully and wantonly" caused an unnecessary deployment of the Ohio National Guard on the Kent State campus and, in the same manner, ordered the Guard members to perform allegedly illegal actions resulting in the death of plaintiffs decedents, and which further allege that the action was taken "under color of state law: and deprived the decedents of their lives and rights without due process of law, allege, fairly read, that each of the named defendants, in undertaking such actions, acted either outside the scope of his respective office or, if within the scope, acted in an arbitrary manner, grossly abusing the lawful powers of office.

Appeal and Error § 1257 — sufficiency of complaint

3. When a federal court reviews the sufficiency of a complaint, before the reception of any evidence either by affidavit or admissions, the issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims; this is so even though it may appear on the face of the pleadings that a recovery is very remote and unlikely,

but that is not the test.

Pleading § 104 — dismissal — construction of complaint

4. In passing on a motion to dismiss, whether on the ground of lack of jurisdiction over the subject matter or for failure to state a cause of action, the allegations of the complaint should be construed favorably to the pleader.

Pleading § 103 — dismissal of complaint

5. A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

States § 95 — immunity from suit — liability of state officers — deprivation of federal rights

9. The District Court errs in dismissing, for lack of jurisdiction, plaintiffs' complaints, to which no answer has been filed and which allege facts demonstrating that they are seeking to impose individual and personal liability on the defendant state officials for what plain-

tiffs claim was a deprivation of federal rights by these officials under the color of state law, since whatever the plaintiffs may or may not be able to establish as to the merits of their allegations, their claims, given the favorable reading required by the Federal Rules of Civil Procedures, are not barred by the Eleventh Amendment.

Civil Rights § 12.5; States § 26 — executive immunity — civil rights statutes

14. Through the civil rights statutes, Congress intended to enforce provisions of the Fourteenth Amendment against those who carry a badge of authority of a state and represent it in some capacity, whether they act in accordance with their authority or misuse it.

Civil Rights § 12.5; States § 26 — executive immunity — violation of civil rights

15. Government officials, as a class, cannot be totally exempt, by virtue of some absolute immunity, from liability under the terms of 42 USCS § 1983, providing

for a civil action for violation of federal rights, since the statute includes within its scope the misuse of power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.

APPENDIX B

No. 92-3164

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROBERT J. STANDRING, Plaintiff-Appellant, v. RALPH A. MCALLISTER, Defendant-Appellee	**FILED JUN 18 1992** O R D E R LEONDARD GREEN, Clerk NOT RECOMMENDED FOR FULL-TEXT PUBLICATION Sixth Circuit Rule 24 limits citation to Ito specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court. This is to be prominently displayed if this decision is reproduced.

BEFORE: KEITH and RYAN, Circuit Judge, and KRUPANSKY, Senior Circuit Judge.

Robert Standring appeals the district court's judgment dismissing his case and granting the defendant's motion for Fed. R. Civ. P. 11 sanctions in this 42

U.S.C. § 1983 private civil rights case. Upon examination of the record and briefs, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Standring filed a complaint against a Cuyahoga County Common Please Judge, Ralph McAllister. Standring alleged that his constitutional rights were violated during a civil action styled *Xerox Corp v. Standring*, Case No. 186651, filed in the Cuyahoga Court of Common Pleas. Judge McAllister presided over that civil action in which Standring was the defendant. Specifically, Standring alleged that during the course of proceedings in the *Xerox* case, Judge McAllister denied various discovery motions, secretly advanced the trial date without giving written notice and timely journal entry, deprived Standring of the right to trial by jury, excluded material evidence during the trial and also made prejudicial remarks, coached witnesses to give false testimony, conspired with defense counsel, made false entries upon the court's docket, and excluded expert testimony. Standring also alleged

that Judge McAllister violated Ohio Rev. Code §2921.45(A). He requested $250,000 in damages, plus costs and a public apology.

Upon review of the magistrate judge's report and recommendation, the district court granted the defendant's motion to dismiss, and granted sanctions against Standring. See Fed. R. Civ. P. 11; Fed. R. Civ. P. 33; *Stump v. Sparkman*, 435 U.S. 349, 355-57 (1978).

On appeal, Standring argues that the district court failed to consider his constitutional claims and the underlying facts.

As an initial matter, Standring did not challenge the award of sanctions against him on appeal.[5] This claim is thus considered abandoned and not reviewable. See *McMurphy v. City of Flushing*, 802 F.2d 191, 198-99 (6th Cir. 1986).

Upon consideration, we affirm the district court's judgment for the reasons stated in the magistrate

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5 This statement is false. Petitioner not only challenged *sanctions*, but in fact challenged them four times. It appears as if the Court of Appeals totally failed to read Petitioner's comprehensive objections to the US Magistrate's R&R, or if read, failed to take those objections under consideration.

judge's July 22, 1991, Report and Recommendation as adopted by the district court. Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

(Signed by the Clerk Green)
Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT J. STANDRING,	)	CASE NO. 1:91CV0381
	)	
Plaintiff,	)	JUDGE ALICE
	)	BATCHELDER
v.	)	
	)	– MAGISTRATE
RALPH McALLISTER,	)	JUDGE J.W.
	)	BARTUNEK
Defendant.	)	
	)	REPORT AND
	)	RECOMMENDATION

This action is before the court upon the plaintiff's complaint seeking damages pursuant to 42 U.S.C. §1983. The matter comes before the magistrate judge upon the motion of defendant to dismiss plaintiff's complaint for the reason that it fails to state a claim upon which relief can be granted, pursuant to Fed.R.Civ.P. 12(b)(6).

I.

In 1990 defendant, a Cuyahoga County Common Please Court Judge, presided over a tort case in

which plaintiff was a party. Plaintiff contends that defendant through the denial of all of his motions, the failure to notify plaintiff of a change in the trial date, the denial of a jury trial, and the falsifying of the court's journal entry violated his right to due process.[6] As a result of the judge's action, plaintiff claims that he was financially and emotionally injured. Plaintiff seeks $250,000 in damages plus costs and a public apology.

II.

In his motion, defendant asserts that the complaint should be dismissed pursuant to Rule 12(b)(6) because defendant, as a judge, has absolute immunity from civil liability.

> Every defense, in law or in fact, to a claim for releif in any pleading . . . shall be asserted in the responsivle pleading thereto if one is required, except that the following

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6 This synopsis of the case by the US Magistrate grossly understates Petitioner's case and cause of original action, and especially the defendant's actions taken *outside* defendant's judicial forum, such as secretly moving the case forward to obviate seven subpeonas, covering up a forgery, coaching Xerox witnesses to give false testimony, suspension of all Constitutional Rights and threatening the petitioner.

> defenses may at the option of the pleader be made by motion . . . (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted.

Fed.R.Civ.P. 12(b)(6). To be successful, the defense must appear valid on the face of the complaint. Basile v. Merrill Lynch, Pierce, Fenner & Smith Inc., 551 F. Supp. 580, 591 (S.D. Ohio 1982); McNally v. American States Insurance Co., 382 F.2d 748 (6th Cir. 1967).

It is well settled that in order to safeguard principle and independent decision-making, a judge may not be held to answer in civil damages for those judicial acts committed in the exercise of his jurisdiction.[7] See, Stump v. Sparkman, 435 U.S. 349 (1978); Pierson v. Ray, 386 U.S. 547 (1967). The doctrine of judicial immunity is applicable in suits under 42 U.S.C. §1983. Pierson, 386 U.S. at 554-555 (1967). Furthermore, a judge will not forfeit the immunity because the action he took was in error, done maliciously or in excess of his authority. Stump, 435 U.S. at 356; Campbell v. Patterson, 724 F.2d 41, 43 (6th Cir. 1983). Only when a

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[7] The US Magistrate errs. This is not the issue at bar, but rather those acts and decisions taken outside the realm of lawful jurisdiction.

judge has acted in the "clear absence of all jurisdiction" will he be subject to liability. Stump, 435 U.S. at 357.

Plaintiff makes no allegations in his complaint that defendant acted in a clear absence of all jurisdiction. Rather all of plaintiff's assertions involve actions of the defendant which pertained to and occurred during plaintiff's trial, which was properly before the defendant.[8] Although plaintiff argues that defendant is not shielded by absolute immunity, he fails to support his theory with any case law. The law specifically states that ~~a~~ judge is immune from civil liability unless he is acting in clear absence of all jurisdiction. Id. Since the complaint does not even allege the absence of jurisdiction, defendant is immune from any civil liability. Thus, plaintiff has failed to state a claim upon which relief can be granted.

Therefore, it is the recommendation of the magistrate judge that the motion of defendant to dismiss be

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8 This is not a true statement. Plaintiff-Petitioner challenged Defendant-Respondent's jurisdiction for cause more than 30 days before the scheduled date of trial.

GRANTED.

Respectfully submitted,

Signed

JOSEPH W. BARTUNEK
United States Magistrate Judge

DATED: July 19, 1991

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within ten (10) days of receipt of this notice.[9] Failure to file objections waives a party's right to further appellate review in regard to the matters addressed in the Report and Recommendation. See Thomas v. Arn, 474 U.S. 140, 106 S.Ct. 471 (1985); United States v. Walters, 638 F.2d 947 (6th Cir. 1981).

[9] Notice of Appeal was properly filed within the statutory guidelines.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT J. STANDRING,	)	CASE NO. 1:91CV0381
	)	
Plaintiff,	)	JUDGE ALICE
	)	BATCHELDER
v.	)	
	)	MAGISTRATE
RALPH McALLISTER,	)	JUDGE J.W.
	)	BARTUNEK
Defendant.	)	
	)	REPORT AND
	)	RECOMMENDATION

This action is before the court upon the plaintiff's complaint seeking damages pursuant to 42 U.S.C. §1983. The matter comes before the court upon defendant's motion s for sanctions pursuant to Fed.R.Civ.P. 11 with respect to plaintiff's interrogatories.

During March 1991 three persons, none of who are parties in this action, were served with interrogatories propounded by plaintiff. In response, Defendant filed two motions to strike the interrogatories and for sanctions. It is the previous recommendation of the

magistrate judge that the motions to strike should be denied for reason they were moot. Therefore, the magistrate judge will only address the issue of Rule 11.

I.

Rule 11 states in pertinent part:

> Every pleading, motion, and other paper of as party represented by an attorney shall be signed by a least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law. . . and that it is not interposed for any imporper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a

reasonable attorney's free.

(emphasis added).

In his motions for sanctions, defendant claims that the interrogatories are in clear violation of Fed.R.Civ.P. 33.

II.

Indetermining whether there has been a violation of Rule 11, a court must use an objective standard of reasonableness under the circumstances. Davis v. Crush, 862 F.2d 84, 88 (6th Cir. 1988). The fact that plaintiff brought this action as a pro se litigant will be taken into account. Fed.R.Civ.P. 11 advisory committee notes of 1983; Haines v. Kerner, 404 U.S. 519, 520 (1972).

The record shows that the only parties in this action are the plaintiff and the defendant. Rule 33(a) states, "[a]ny party may serve upon any other party written interrogatories to be answered by the party served. . . ." Not only does the language of the rule specifically state that interrogatories are to be served only on parties in the action, but so does the case

law.[10] Andrulonis v. United States, 96 F.R.D. 43, 45 (N.D.N.Y. 1982).

After a review of the interrogatories and the law, it is clear that the interrogatories were served upon the three individuals in violation of Rule 33. Although pro se plaintiff's are not held to as stringent standards as a lawyer, they still have a responsibility under Rule 11 to inquire into whether their pleading, motion, or other paper is well groundeded in fact and is warranted by existing law. Since the plain language of the rule informs any reader that only parties in an action can be served interrogatories, plaintiff knew or should have known at the time he signed the papers that the interrogatores were not warranted by existing law. Thus, plaintiff violated Rule 11.

Therefore, it is the recommendation of the magistrate judge that defendant's motion for Rule 11 sanctions be granted and it is further recommended that

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10 Although it is not mentioned or referenced in the R&R, Petitioner did attempt to injoin these parties as third-party defendants for their torte liability and duplicity in furthering the uttering of a forgery. The US Magistrate, however, made no inquiries into such matters.

defendant be redered to file an accounting of costs, including attorney's fee, which were incurred as a result of these two motions within 60 days whereupon the magistrate judge will determine the appropriate sanctions.

Respectfully submitted,

Signed

JOSEPH W. BARTUNEK
United States Magistrate Judge

DATED: July 19, 1991

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within ten (10) days of receipt of this notice.[11] Failure to file objections waives a party's right to further appellate review in regard to the matters addressed in the Report and Recommendation. See Thomas v. Arn, 474 U.S. 140, 106 S.Ct. 471 (1985); United States v. Walters, 638 F.2d 947 (6th Cir. 1981).

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[11] Notice of Appeal was properly filed within the statutory guidelines.

APPENDIX D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

ROBERT J. STANDRING	No. 1:91-CV-0381
Plaintiff,	Judge Alice M. Batchelder
vs.	Assigned to U.S. Magistrate
RALPH A. McALLISTER,	Judge Joseph W. Bartunek
Defendant	**OBJECTION TO THE U.S. MAGISTRATE'S REPORT & RECOMMENDATION With SUPPORTING BRIEF**

Plaintiff, Robert J. Standring, having received the U.S. Magistrate's Report & Recommendation (hereinafter referred to as R&R) on July 23, 1991, now raises his timely objections to said R&R to grant defendant's motion to dismiss plaintiff's action with sanctions.

Plaintiff's objections are based upon the following issues of law as well as the substantive issues outlined in plaintiff's accompanying Brief and Exhibit.

Respectfully submitted,

Signed

ROBERT J. STANDRING
Plaintiff (pro se)
757 Front Street
Berea, Ohio 44017-1608
216 / 234-6118 (office)

BRIEF IN SUPPORT OF PLAINTIFF'S OBJECTIONS:

Objection I: R&R inaccurately summarizes Plaintiff's case.

Synopsis or summary of plaintiff's case should be amended to read:

> "Plaintiff has brought a tort action under the Ohio Revised Code 2921.45 against the defendant (a Cuyahoga County Common Pleas Court Judge) for defendant's civil and criminal violation of plaintiff's Civil and Constitutional Rights under the Bill of Rights provisions covered in Articles V, VI, VII and XIV. Plaintiff alleges that defendant a) conducted a secret trial without benefit of jury, b) obviated all lawful subpoenas, c) interfered with witnesses testimony, d) participated in covering up the uttering of a forgery used against the plaintiff, e) denied plaintiff the right to discovery in all forms, and f) tampered with or caused false information to be entered on defendant's official Court Docket. Plaintiff seeks redress of damages for these acts, further alleging that plaintiff's Civil and Constitutional Rights to a fair trial were both civilly and criminally violated."

Plaintiff believes that by portraying plaintiff's case in the R&R in superficial terms, and by omission, glossing over the importance to the right of discovery,

as well as the magnitude of the Civil and Constitutional Rights issues involved, could result in a prejudicial ruling and/or a decision contrary to law.

Since the Hickman v. Taylor, et al, 329 U.S. 495, 67 S. Ct. 385-397 (1947) case, it is a well established point of law that a party to an action is entitle to discovery in all forms. Therefore, for the defendant to deny discovery in all forms, and for the R&R to ignore this paramount issue, the R&R is materially defective.

In turn, this raises the issue of violating plaintiff's Constitutional Rights protected under the Due Process clause as provided for under Amendments V and XIV of the U.S. Constitution.

Objection II: The case has not been fully adjudicated on motion.

The R&R's referencing of Fed. Rule 12(b)(6) as the basis for recommending that defendant's motion to dismiss be granted, fails to properly address Fed. Rule 56(d), which is referenced and incorporated by Fed. Rule 12(b)(6) as a point of law.

Defendant's alleged criminal conduct was never denied, and plaintiff's supporting exhibits were never challenged. Therefore, as a matter of law, the Court must proceed on the basis that the allegations are true.

In the absence of denying or challenging plaintiff's allegations and/or exhibits, defendant pleaded absolute judicial immunity as an affirmative defense. Such a defense under the Eleventh Amendment, shifts the burden of proof to the defendant. Because the defendant has failed in this regard, the case has not been properly or fully adjudicated on motion urder Fed. Rule 56(d), and therefore, as a matter of law, the R&R must be overruled.

Objection III: <u>Improper linkage by reference</u>.

The R&R has linked by reference the "absolute immunity" issue to Fed Rule 12(b)(6). In so doing, the R&R shift or transfers the validity of the complaint to the defense, which implies that the burden of proof has been magically transferred back to plaintiff's Civil Rights cause of action.

Plaintiff objects to this improper linkage by reference, and in support of plaintiff's objection, plaintiff cites:

> "Actions brought under the civil rights laws against a public official whose position might entitle him to immunity if he acted in good faith, a plaintiff is not required to allege that the official has acted in bad faith in order to state a claim for relief: rather, since the call for immunity is a defense, the burden of pleading it rests with the defendant, and it is for him to claim that his conduct was justified by an objectively reasonable belief that it was lawful." (See Gomez v. Toledo, 446, US 635, 64 L. Ed 2d 572, 100 S Ct 1920).

Also, Harlow v. Fitzgerald, 457 US 800, 73 L. Ed 2d 396, 102 S Ct 2727, supports this ruling in reference to a defendant who commits wrongful acts within the scope of his discretionary authority.

Defendant's affirmative defense fails to meet the objectively reasonable measure of belief. As a matter of law, an affirmative defense claiming "absolute immunity" required that the individual hold diplomatic status or be serving as a member of Congress in some

lawful function or duty, and in this regard the defense has failed to demonstrate such status.

Objection IV: Cases selectively cited in the R&R do not apply to this action.

The R&R has arbitrarily decided that the defendant's criminal conduct was inside the boundaries of judicial discretion. However, this is a mixed question of law and fact, and so far, all evidentiary issues of fact clearly point in favor of the plaintiff.

The R&R selectively addresses the judicial immunity issue by citing cases where immunity was granted to defendants acting within (not outside) the scope of judicial discretion. None of the cited cases pertain to judicial immunity involving unauthorized and/or criminal conduct.

A balanced R&R should have cited the U.S. Supreme Court Case (Ex parte Young, 209 US 123, 52 l. Ed 714, 28 S Ct 441). Here, the U.S. Supreme Court held that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had

deprived another of a federal right under the color of state law.

> "When a state officer acts under a state law in a manner violative of the Federal Constitution, he comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official character and is subjected in his person to the consequences of his individual conduct. The state has no power to impart to him any immunity from responsibility to the supreme authority of the United States." – (See Scheuer v. Rhodes, 416 US 232, 40 L. Ed 2d 90, 94 S Ct 1683, 71 Ohio Ops 2d 474).

Objection V: **R&R fails to address principles and safeguards expressed or implied under the U.S. Constitution.**

The R&R applies rationale that presupposes defendant's "*judicial acts* (were) *committed in the exercise of his jurisdiction*" when in fact, the defendant's acts were clearly criminal in nature, and thus, fell outside the realm of his ministerial, statutory and administrative authority, as well as defendant's sworn oath of office and affirmative obligation to uphold and preserve the U.S. Constitution.

By ignoring defendant's obligations commensurate with defendant's sworn oath of office, the R&R appears to be promoting or condoning the defendant's acts of judicial tyranny and machinations, which if allowed to stand without vigorous objection would be contrary to law and repugnant to the spirit of justice.

Defendant's shocking judicial conduct clearly lies outside the defendant's lawful jurisdiction. For the R&R to totally ignore such conduct, it is in clear violation of all substantive U.S. Constitutional and Civil Rights safeguards, which was the foundation for bringing plaintiff's initial action.

Objection VI: R&R incorrectly states an erroneous assertion attributed to plaintiff.

The R&R incorrectly states that ". . . *plaintiff's assertions involve actions of the defendant which pertained to and occurred during plaintiff's trial, which was properly before the defendant.*"

To the contrary—nothing before the defendant was proper! The obviating of subpoenas was not proper, secretly moving the trial forward was not

proper, repeatedly interfering with witness testimony was not proper, and the tampering with or causing false information to be entered on the official Court Docket was not proper.

All of these acts committed by the defendant occurred behind closed doors and in partisanship with opposing council, and committed without the prior knowledge and/or consent of the plaintiff.

First case in point: The plaintiff only discovered defendant's tampering with the Court Docket several months after the fact, where it was brought to plaintiff's attention by a Clerk of Court employee.

Second case in point: According to a sworn affidavit, the defendant was neither holding court nor in judicial robe when he threaten the plaintiff with suspension of his Constitutional Rights. (See previously filed Plaintiff's Exhibit "D" attached. Although this Exhibit speaks for itself, it is further corroborated by the defendant in a certified transcript.)

Objection VII: R&R incorrectly states that plaintiff has not stated a cause of action.

The R&R incorrectly states that "*Since the complaint does not even allege the absence of jurisdiction, defendant is immune from any civil liability.*"

Under the bold heading of "**Cause of Action**" plaintiff's petition for redress begins the opening paragraph and first sentence with "*Plaintiff avers that the above defendant knowingly, willfully and flagrantly committed a breach of Civil Rights against the plaintiff, resulting in . . .*" Plaintiff ends this first paragraph with, "*Plaintiff further maintains that defendant's actions collectively and individually violated plaintiff's Civil Rights by excessively exceeding the scope of judicial authority.*" (Emphasis and italics added).

What ambiguity appears here? Does not the words "excessively exceeding the scope of judicial authority" mean the same as or imply the absence of all jurisdiction? Plaintiff believes that the R&R is 'reaching' in its efforts to overlook the obvious and attribute some esoteric definition to this terminology.

Objection VIII: Objection to U.S. Magistrate entertaining sanction against the

plaintiff under Rule 11 for violation of Rule 33.

Plaintiff's objection to imposing Rule 11 sanctions is threefold. First, the defense council has not shown or demonstrated that he lawfully represented the three individuals who were served interrogatories in error while plaintiff was attempting to implement to discovery process.

Second, plaintiff believes that defense's action were undertaken or exercised on a *pro bono* or *quid pro quo* arrangement, and therefore, gratuitous in nature to shield or help conceal additional damaging evidence.

Third, each of the individuals served with interrogatories, albeit in error, directly participated in assisting the defendant with covering up an uttered forgery, obviating of subpoenas and jointly participated with the defendant in violating plaintiff's Constitutional and Civil Rights. Had it not been for their willing participation and direct personal involvement, these parties would not have been served interrogatories in the first place.

Thus, imposing sanctions prior to trial for the benefit of defense's gratuitous acts should not apply unless the defendant is able to prevail at trial before an impaneled jury.

THEREFORE, individually and collectively, the plaintiff requests that Judicial Notice be taken of these objections to preserve plaintiff's right to appellate review. And also, for each of the reasons stated herein, that the U.S. Magistrate's Report and Recommendations be set aside.

FURTHERMORE, plaintiff requests that he be allowed to proceed forthwith in obtaining normal discovery, which includes his Request for Admissions, Request for the Production of Documents and the taking of Depositions, all of which have been previously requested and duly served upon the defendant.

Respectfully submitted,
Signed

ROBERT J. STANDRING
Plaintiff (pro se)
757 Front Street
Berea, Ohio 44017-1608
216 / 234-6118 (office)

Exhibit Attachments:

Plaintiff has attached a signed and sworn affidavit to these objections, which is incorporated herein as Exhibit "D" and made part of these written objections to the U.S. Magistrate's Record & Recommendation.

Certificate of Service:

Plaintiff avers that he has filed his objection to the U.S. Magistrate's Report and Recommendation with the Clerk of Court within ten days to preserve plaintiff's right to further appellate review. Plaintiff further avers that he has served a copy of said objections upon the defendant's attorney via regular U.S. Mail, with postage fully prepaid, this 29th day of July 91.

Signed

ROBERT J. STANDRING

SWORN AFFIDAVIT

I, Lori Ann Sharkey, of 5221 Woodbury Hills Drive, Parma, OH 44134, do solemnly swear under oath that I was physically present in Courtroom 17D at the Cleveland Justice Center on August 20 and 21, 1990, between the hours of 9 AM and 3:30 PM, while Judge McAllister was conducting a trial.

I further aver that over the lunch hour on August 20, 1990, while the court was in recess, Judge McAllister, re-entered the courtroom at about 12:15 PM, out of judicial robe and immediately approached Mister Standring's table. First, the judge conducted a physical search of my personal belongings, and upon discovering that I was not secretly recording testimony, Judge McAllister then proceeded to threaten Mister Standring by saying the following:

> "Let me make one thing perfectly clear to you right here and now. I'm going to take those Constitutional and Civil Rights you've been counting on, roll them up and shove them up your ass and watch you choke on them."

After Judge McAllister's departure from the courtroom, I made the following inquiry, "I think you got the judge mad at you. Was it because you asked for a jury trial?" At this time, no one else was present in the room.

It should also be noted that I did not participate in the trial for either side, and was only in attendance as a spectator to the two-day event. A jury was quickly impaneled for a short time after Mister Standring requested judicial notice be taken on the second day. Then after being recessed for lunch on the second day, the jury never returned to the courtroom. The jury never rendered or delivered a verdict in my presence, nor did I witness a jury being discharged at the end of the trial. This concludes my statement of fact.

THE FORGOING AFFIDAVIT has been given of my own free will, and to the very best of my recall, it is averred to be true and complete, without any material fact eliminated or distorted. This Affidavit was made without remuneration and without promise of remuneration, or any other promise of services, compensa-

tion or reward of any kind, and I have affixed my signature this 9 day of May, 1991 to that effect.

Signature of Lori A. Sharkey

LORI A. SHARKEY

(NOTARY'S SEAL)

Witnessed and sworn to in my presence this 9 day of May 1991, to which I have affixed my hand and seal.

Signature of Kathleen L. Burkett

KATHLEEN L. BURKETT

NOTARY PUBLIC, STATE OF OHIO

MY COMMISSION EXPIRES FEB. 18, 1993

APPENDIX E

No. 92-3164

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROBERT J. STANDRING, Plaintiff-Appellant, v. RALPH A. MCALLISTER, Defendant-Appellee	**FILED** **AUG 13 1992** LEONARD GREEN, Clerk **ORDER**

BEFORE: KEITH and RYAN, Circuit Judge, and KRUPANSKY, Senior Circuit Judge.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

(Signed by the Clerk Green)
Leonard Green, Clerk

APPENDIX F

XIV Amendment to the U.S. Constitution

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX G

42 USC § 1983

Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1992

NO. _____

ROBERT J. STANDRING

PETITIONER, *PRO SE*

vs.

RALPH A. McALLISTER

RESPONDENT.

PROOF OF SERVICE

I, Robert J. Standring, do swear or declare that on or before this date, August 31, 1992, pursuant to Supreme Court Rules 29.3 and 29.4, I have served the attached PETITION FOR A WRIT OF CERTIORARI on the party's counsel to the above proceeding and on every other person required to be served by depositing an envelope containing the above documents in the

United States mail, properly addressed to each of them with first-class postage prepared.

The names and addresses of those served are as follows:

Craig S. Cobb (0023232) &
Jill M. Gliha (0046724)
Janik, Lester & Dunn, LPAs
1111 Chester Avenue
400 Park Plaza Building
Cleveland, Ohio 44114

(SEAL)

Robert J. Standring

Robert J. Standring, Affiant

Subscribed and Sworn to Before Me
this 24th day of August, 1992.

Linda T. Oberacker

Notary Public in and for
Cuyahoga County, State of Ohio

LINDA T. OBERACKER, Notary Public
State of Ohio, Cuyahoga County
My commission expires Dec. 20, 1992